

THE EFFECTIVE DATE OF THIS ORDINANCE IS JANUARY 1, 2009

ORDINANCE NO. 09- 01-505

Re: Revisions To The Frederick County
Employees Retirement Plan

RECITALS

The Board of County Commissioners of Frederick County ("Board") by Ordinance No. 93-11-075 established a retirement plan for the employees of the Frederick County Government, effective July 1, 1993. The Frederick County Employees Retirement Plan ("Plan") was later amended by Ordinance No. 93-30-094, Ordinance No. 94-26-121, Ordinance No. 96-16-168, Ordinance No. 98-07-209, Ordinance No. 00-03-245, Ordinance No. 01-09-283, Ordinance No. 01-21-295, Ordinance No. 02-12-308, Ordinance No. 03-11-334 and Ordinance No. 07-19-459.

The Board now deems it appropriate to make certain additional revisions to the Plan to: (1) revise the Plan's provisions pertaining to disability benefits, specifically, the earned income offsets and conversion of disability benefits to "normal retirement" benefits, (2) clarify that a benefit offset applied following a retiree's re-employment by the County and later participation in the Plan will not cause the re-employed retiree's benefits to decrease below the amount being received following the retiree's first retirement, (3) address changes in the laws governing the availability of rollover distributions, and (4) conform the titles of Retirement Plan Committee members to the current County designation. A hearing was held on December 23, 2008

at which time members of the public and plan participants had an opportunity to comment on the proposed revisions.

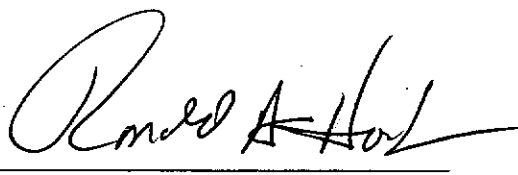
NOW THEREFORE BE IT ENACTED AND ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS FOR FREDERICK COUNTY, MARYLAND that: the provisions set forth on the attached Exhibit A, entitled "Twelfth Amendment to the Frederick County Employees Retirement Plan" are hereby adopted and incorporated into the Frederick County Employees Retirement Plan.

AND BE IT FURTHER ENACTED AND ORDAINED that: the changes and revisions made by this Ordinance shall be effective on January 1, 2009 unless otherwise provided in the Amendment.

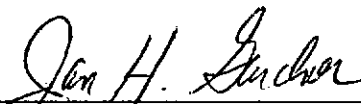
The undersigned hereby certifies that the foregoing Ordinance was approved and adopted on the 6th day of January, 2009.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF FREDERICK COUNTY



Ronald A. Hart
County Manager

By: 

Jan H. Gardner
President

LBT
1-7-09

1826166

EXHIBIT A
TWELFTH AMENDMENT TO THE
FREDERICK COUNTY EMPLOYEES RETIREMENT PLAN

1. Section 3.2(c) is amended to read as follows:

(c) Benefit Payments - If, at the time of reemployment, the Participant is receiving benefits under the Plan, such benefits (other than those previously funded through individual or non-pooled group insurance annuity arrangements) shall cease until such time as they may be paid in conjunction with the benefits accrued with respect to the Participant's subsequent employment. In any event, any benefits payable with respect to his subsequent employment shall be reduced or offset if and as necessary to avoid duplication of any benefits payable or paid with respect to his prior employment. NOTWITHSTANDING THE FOREGOING, THE BENEFIT PAYABLE FOLLOWING THE PARTICIPANT'S SUBSEQUENT RETIREMENT SHALL NOT BE LESS THAN THE BENEFIT PAYABLE WITH RESPECT TO THE PARTICIPANT'S INITIAL EMPLOYMENT.

2. Section 6.4 is amended to read as follows:

6.4 Disability Benefits - The Plan shall pay disability benefits determined in accordance with the following provisions:

(a) Ordinary Disability - If a Participant reaches a Termination Date by reason of total and permanent disability, he[/she] shall be entitled to receive a lump sum distribution of his[/her] Pick-Up Contributions Benefit, if he[/she] is entitled to the benefit, and, if he[/she] is 100% vested pursuant to Section 6.5, he[/she] shall be entitled to a monthly disability benefit equal to the lesser of: (i) his[/her] Accrued Benefit, calculated on the basis of his[/her] Years of Creditable Service accumulated as of his[/her] date of disability, plus his[/her] projected Years of Creditable Service, projecting Creditable Service until THE PARTICIPANT'S NORMAL RETIREMENT DATE, BASED ON AGE AND/OR PROJECTED YEARS OF ELIGIBILITY SERVICE [(A) age 50 if the Participant is a Uniformed Participant, or (B) age 60 if the Participant is a Non-Uniformed Participant], or (ii) 50% of his Highest Average Compensation as of the date the Participant's total and permanent disability causes the Participant's loss of earning capacity.

(b) Line of Duty Disability - A Participant (regardless of his[/her] length of service or vested status) who terminates employment by reason of total and permanent disability, incurred as a result of an accident or injury which has been sustained as an active Covered Employee and which has been ruled compensable under the Maryland Workers' Compensation Act, shall be entitled to receive a lump sum distribution of his[/her] Pick-Up Contributions Benefit, if he[/she] is entitled to the benefit, and a monthly benefit equal to the greater of: (i) the benefit determined pursuant to Section 6.4(a), or (ii) [the lesser of: (A) a monthly amount which, when combined with

any Social Security disability benefits he/she is entitled to receive on account of the injury or illness underlying the Participant's total and permanent disability, equals 100% of his/her Highest Average Compensation determined at the time his/her disability is incurred, or (B)] 66-2/3% of [such] THE PARTICIPANT'S Highest Average Compensation. [For purposes of this Section 6.4(b), "Social Security disability benefits" shall be limited to the initial monthly benefit received by the disabled Participant, and shall not include retroactive payments or amounts representing attorneys' fees or other fees or reimbursements associated with the award of Social Security disability benefits.]

(c) Disability Benefits - Part-Time Employees. For purposes of calculating the limitations under Sections 6.4(a)(ii) and 6.4(b)(ii), the Highest Average Compensation of a Participant who was not employed on a full time basis shall be calculated on the basis of his Compensation and not the full time equivalent of his Compensation.

(d) General Provisions Relating to Disability -

(i) COMMENCEMENT OF BENEFITS: Disability benefits shall commence on the first day of the month coincident with or otherwise next following the determination of disability by the County [; provided, however, that benefits payable pursuant to this Section 6.4 shall be reduced by: (A) \$1.00 for each \$1.00 received by the Participant under the Maryland Workers' Compensation Act as compensation for an accident or injury underlying the Participant's total and permanent disability, and (B) \$1.00 for each \$2.00 of the Participant's earned income. The disabled Participant shall furnish to the County a copy of his or her federal income tax return each year].

(ii) FORM OF BENEFIT: The benefits payable pursuant to this Section 6.4 shall be payable in the normal form provided by Section 6.1, unless an optional form of payment has been elected pursuant to Section 8.2.

(iii) TOTAL AND PERMANENT DISABILITY: For purposes of the initial determination of a Participant's disability, total and permanent disability shall mean a medically determinable physical or mental impairment which can be expected to be permanent or result in death, and by reason of which the Participant will be prevented from performing the usual duties of his position with the County. Such total and permanent disability must be evidenced by a certificate of a physician selected or approved by the County. However, total and permanent disability shall not include any injury or disease which: (i) resulted from or consists of chronic alcoholism or addiction to narcotics, (ii) was contracted, suffered or incurred while the Participant was engaged in, or resulted from his having engaged in, a criminal enterprise, (iii) was intentionally self-inflicted (iv) arose as a result of willful negligence on the part of the Participant.

(IV) CLASSIFICATION OF LINE OF DUTY DISABILITY:

(A) THE DISABILITY OF A PARTICIPANT WHO IS AWARDED LINE OF DUTY DISABILITY BENEFITS SHALL BE CLASSIFIED AS "CATASTROPHIC" OR "NON-CATASTROPHIC." "CATASTROPHIC DISABILITY" MEANS A LINE OF DUTY DISABILITY BY REASON OF WHICH THE PARTICIPANT APPLIES FOR AND IS AWARDED DISABILITY BENEFITS PURSUANT TO SECTION 223 OF THE FEDERAL SOCIAL SECURITY ACT (42 U.S.C. SECTION 423), OR ANY SUCCESSOR STATUTE. "NON-CATASTROPHIC DISABILITY" MEANS A LINE OF DUTY DISABILITY WHICH IS NOT A CATASTROPHIC DISABILITY.

(B) A PARTICIPANT'S LINE OF DUTY DISABILITY SHALL BE CLASSIFIED AS A "NON-CATASTROPHIC DISABILITY" UNTIL THE PARTICIPANT PROVIDES THE COUNTY WITH EVIDENCE OF THE AWARD OF SOCIAL SECURITY DISABILITY BENEFITS.

(C) TO BE ELIGIBLE FOR THE CLASSIFICATION OF LINE OF DUTY DISABILITY BENEFITS AS "CATASTROPHIC," THE PARTICIPANT MUST NOT HAVE BEEN RECEIVING SOCIAL SECURITY DISABILITY BENEFITS AS OF HIS TERMINATION DATE, AND MUST APPLY FOR SOCIAL SECURITY DISABILITY BENEFITS NO LATER THAN 90 DAYS FOLLOWING HIS TERMINATION DATE.

(D) AS SOON AS ADMINISTRATIVELY PRACTICAL AFTER RECEIPT OF THE NOTIFICATION OF THE AWARD OF SOCIAL SECURITY DISABILITY BENEFITS, THE PARTICIPANT'S MONTHLY BENEFIT SHALL BE CONVERTED TO A CATASTROPHIC LINE OF DUTY DISABILITY BENEFIT. WITH RESPECT TO A PARTICIPANT WHO RECEIVES AN AWARD OF SOCIAL SECURITY DISABILITY BENEFITS AFTER HAVING ATTAINED HIS NORMAL RETIREMENT DATE, BASED ON AGE AND/OR PROJECTED YEARS OF ELIGIBILITY SERVICE, THE CONVERSION TO A CATASTROPHIC LINE OF DUTY DISABILITY BENEFIT SHALL BE EFFECTIVE AS OF THE LATER OF: (1) THE FIRST DAY OF THE MONTH AS OF WHICH THE PARTICIPANT RECEIVES BENEFITS PURSUANT TO THIS SECTION 6.4, OR (2) THE DATE THE PARTICIPANT ATTAINED HIS NORMAL RETIREMENT DATE, BASED ON AGE AND/OR PROJECTED YEARS OF ELIGIBILITY SERVICE.

(E) AS OF THE JULY 1 FOLLOWING THE DATE THE PARTICIPANT CEASES TO BE ELIGIBLE FOR SOCIAL SECURITY DISABILITY BENEFITS, THE PARTICIPANT'S LINE OF DUTY DISABILITY SHALL BE CLASSIFIED, RETROACTIVELY IF NECESSARY, AS A "NON-CATASTROPHIC LINE OF DUTY DISABILITY." IF THE PARTICIPANT HAS ATTAINED HIS NORMAL RETIREMENT DATE, BASED ON AGE AND/OR PROJECTED YEARS OF ELIGIBILITY SERVICE, ON THE DATE HE CEASES TO BE ELIGIBLE FOR SOCIAL SECURITY DISABILITY BENEFITS, HIS BENEFITS WILL CONVERT TO A NORMAL RETIREMENT BENEFIT, AS PROVIDED IN SECTION 6.4(D)(X), AS OF THE FIRST DAY OF THE FOLLOWING MONTH. NOTWITHSTANDING THE FOREGOING,

THE CESSATION OF THE SOCIAL SECURITY DISABILITY BENEFITS UPON THE PARTICIPANT'S REACHING SOCIAL SECURITY RETIREMENT AGE SHALL NOT RESULT IN A RECLASSIFICATION OF THE PARTICIPANT'S CATASTROPHIC LINE OF DUTY DISABILITY BENEFITS.

(V) - WORKERS COMPENSATION BENEFIT AND EARNED INCOME OFFSET:

(A) A PARTICIPANT'S BENEFITS PAYABLE PURSUANT TO THIS SECTION 6.4 SHALL BE REDUCED BY \$1.00 FOR EACH \$1.00 RECEIVED BY THE PARTICIPANT UNDER THE MARYLAND WORKERS' COMPENSATION ACT AS COMPENSATION FOR AN ACCIDENT OR INJURY UNDERLYING THE PARTICIPANT'S TOTAL AND PERMANENT DISABILITY.

(B) UNTIL A PARTICIPANT WHO HAS REACHED A TERMINATION BY REASON OF TOTAL AND PERMANENT DISABILITY ATTAINS HIS NORMAL RETIREMENT DATE, BASED ON AGE AND/OR PROJECTED YEARS OF ELIGIBILITY SERVICE, THE PARTICIPANT'S BENEFITS PAYABLE PURSUANT TO SECTION 6.4(A) AND SECTION 6.4(B), BUT ONLY WITH RESPECT TO A NON-CATASTROPHIC LINE OF DUTY DISABILITY, SHALL BE REDUCED BY \$1.00 FOR EACH \$2.00 OF THE PARTICIPANT'S EARNED INCOME IN EXCESS OF 25% OF THE PARTICIPANT'S HIGHEST AVERAGE COMPENSATION. A PARTICIPANT'S HIGHEST AVERAGE COMPENSATION FOR THESE PURPOSES SHALL BE ADJUSTED ANNUALLY EACH JULY 1 IN ACCORDANCE WITH SECTION 6.4(D)(XIII). THE AMOUNT OF EARNED INCOME SHALL BE DETERMINED BASED ON INCOME EARNED BY THE PARTICIPANT DURING THE PRIOR CALENDAR YEAR.

[(iv)] (VI) Until a Participant who has reached a Termination Date by reason of TOTAL AND PERMANENT D[d]isability attains his Normal Retirement Date, BASED ON AGE AND/OR PROJECTED YEARS OF ELIGIBILITY SERVICE, the continuation of his right to receive disability benefits shall depend on his continued survival, and his case shall be subject to periodic review in accordance with rules established by the County to determine his employment status, including, but not limited to, determination of the disabled Participant's ability to secure gainful employment. The review process also includes the requirement that the disabled Participant furnish to the County a copy of his federal income tax return each year AND SUCH OTHER DOCUMENTATION AS MAY REASONABLY BE REQUESTED BY THE COUNTY. In the event a disabled Participant ceases to submit to such review, at any time prior to his Normal Retirement Date, the Participant will be deemed to have recovered from the disability and the disability benefits payable pursuant to this Section 6.4 shall cease.

[(v)] (VII) In the event of the Participant's recovery from the disability and return to service as a Covered Employee, disability benefits payable

pursuant to this Section 6.4 shall cease. Notwithstanding any provision in this Plan to the contrary, the Participant's Years of Eligibility Service and Years of Creditable Service shall include such years during which the Participant received disability benefits pursuant to this Section 6.4.

[(vi)] (VIII) In the event of the Participant's recovery from the disability but failure to return to service as a Covered Employee, disability benefits payable pursuant to this Section 6.4 shall cease. Notwithstanding any provision in the Plan to the contrary, the Participant's Years of Eligibility Service and Years of Creditable Service shall include such years during which the Participant received disability benefits pursuant to this Section 6.4.

[(vii)] (IX) In the event of the death of a disabled Participant, no benefits with respect to the Participant shall be payable except as otherwise provided in ARTICLE VII.

(X) UPON THE ATTAINMENT OF THE PARTICIPANT'S NORMAL RETIREMENT DATE, BASED ON AGE AND/OR PROJECTED YEARS OF ELIGIBILITY SERVICE, THE MONTHLY BENEFIT OF A PARTICIPANT, OR THE BENEFICIARY OF A PARTICIPANT, AS THE CASE MAY BE, RECEIVING LINE OF DUTY DISABILITY BENEFITS CLASSIFIED AS "NON-CATASTROPHIC" PURSUANT TO SECTION 6.4(D)(IV)(A) SHALL BE CONVERTED TO THE BENEFIT THAT WOULD HAVE BEEN PAYABLE PURSUANT TO SECTION 6.1, PROJECTING YEARS OF CREDITABLE SERVICE AND HIGHEST AVERAGE COMPENSATION FROM THE PARTICIPANT'S TERMINATION DATE. THE BENEFIT SHALL CONTINUE TO BE PAID TO THE PARTICIPANT IN THE NORMAL MONTHLY FORM OF RETIREMENT INCOME DESCRIBED IN SECTION 6.1, OR IN THE FORM ELECTED PURSUANT TO ARTICLE VIII, AS ELECTED BY THE PARTICIPANT UPON COMMENCEMENT OF PAYMENT OF DISABILITY BENEFITS. FOR PURPOSES OF PROJECTING HIGHEST AVERAGE COMPENSATION, A PARTICIPANT'S HIGHEST AVERAGE COMPENSATION SHALL BE ADJUSTED AS OF EACH JULY 1 OCCURRING PRIOR TO THE PARTICIPANT'S NORMAL RETIREMENT DATE FOR INCREASES IN THE COST OF LIVING PURSUANT TO SECTION 6.4(D)(XIII).

[(viii)] (XI) Notwithstanding any of the foregoing provisions, if a Participant terminates employment with the County on a date at which he would be entitled to benefits pursuant to Section 6.1 or 6.2, the Participant may elect to receive the benefits provided under Section 6.1 or 6.2, as the case may be.

[(ix)] (XII) A Participant on a Leave of Absence is entitled to receive disability benefits pursuant to this Section 6.4.

(XIII) A PARTICIPANT'S HIGHEST AVERAGE COMPENSATION SHALL BE ADJUSTED TO REFLECT THE INCREASE IN THE COST OF LIVING, FOR PURPOSES OF SECTIONS 6.4(D)(V)(B) AND 6.4(D)(X), BY

MULTIPLYING THE PARTICIPANT'S HIGHEST AVERAGE COMPENSATION BEFORE THE ADJUSTMENT BY A FRACTION:

(A) THE NUMERATOR OF WHICH IS THE CONSUMER PRICE INDEX AS OF THE MARCH 1 FOR WHICH THE ADJUSTMENT IS BEING MADE, AND

(B) THE DENOMINATOR OF WHICH IS THE CONSUMER PRICE INDEX AS OF THE MARCH 1 PRECEDING THE JULY 1 FOR WHICH THE ADJUSTMENT IS BEING MADE.

(C) THE "CONSUMER PRICE INDEX" FOR THESE PURPOSES IS THE CONSUMER PRICE INDEX (URBAN WAGE EARNERS AND CLERICAL WORKERS, WASHINGTON-BALTIMORE, ALL ITEMS, 1996=100), PUBLISHED MONTHLY BY THE BUREAU OF LABOR STATISTICS. IN THE EVENT THE BUREAU OF LABOR STATISTICS ABANDONS PUBLICATION OF THE ABOVE-REFERENCED INDEX, THE COUNTY SHALL ADOPT ANY OTHER INDEX THAT PROVIDES AN ACCURATE MEASURE OF COST-OF-LIVING CHANGES.

(D) THE ANNUAL ADJUSTMENT TO A PARTICIPANT'S HIGHEST AVERAGE COMPENSATION FOR THESE PURPOSES SHALL NOT BE LESS THAN ONE PERCENT OR GREATER THAN THREE AND ONE-HALF PERCENT.

(XIV) A PARTICIPANT WHO WAS RECEIVING BENEFITS PURSUANT TO THIS SECTION 6.4 AS OF DECEMBER 31, 2008 MAY IRREVOCABLY ELECT TO RECEIVE BENEFITS PURSUANT TO THIS SECTION 6.4, AS AMENDED, EFFECTIVE JANUARY 1, 2009 BY FILING A WRITTEN ELECTION, ON A FORM APPROVED BY THE ADMINISTRATOR, NO LATER THAN JANUARY 31, 2009. IN THE ABSENCE OF THE FILING OF AN ELECTION TO RECEIVE BENEFITS PURSUANT TO SECTION 6.4, AS AMENDED, SUCH A PARTICIPANT'S DISABILITY BENEFITS WILL CONTINUE TO BE ADMINISTERED AS THEY WERE IN EFFECT PRIOR TO JANUARY 1, 2009.

3. The definition of "Eligible Retirement Plan" in Section 8.4(A) is amended to read as follows:

Eligible Retirement Plan: An Eligible Retirement Plan is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, or a qualified trust described in Section 401(a) of the Code, that accepts the Distributee's Eligible Rollover Distribution. However, in the case of an Eligible Rollover Distribution to the surviving spouse of a Participant or former Participant, an Eligible Retirement Plan is an individual retirement account or individual retirement annuity. With respect to distributions made after

December 31, 2001, an Eligible Retirement Plan shall also mean an annuity contract described in Section 403(b) of the Code, an annuity plan described in Section 403(a) of the Code and an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred from this Plan. WITH RESPECT TO DISTRIBUTIONS MADE AFTER DECEMBER 31, 2007, AN ELIGIBLE RETIREMENT PLAN SHALL ALSO MEAN A ROTH IRA DESCRIBED IN SECTION 408A OF THE CODE. The definition of "Eligible Retirement Plan" shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code.

4. The definition of "Distributee" in Section 8.4(A) is amended to read as follows:

Distributee: A Distributee includes a Participant or former Participant. In addition, the Participant's or former Participant's surviving spouse and the Participant's or former Participant's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, are Distributees with regard to the interest of the spouse or former spouse. IN ADDITION, THE PARTICIPANT'S DESIGNATED BENEFICIARIES ARE DISTRIBUTEES WITH REGARD TO THEIR RESPECTIVE INTERESTS.

5. The designation of the Chairperson of the Retirement Plan Committee in Section 11.3 is amended to read as follows:

- (i) [Assistant] DEPUTY Director of Human Resources as Chairperson.

Underscoring and CAPITALS indicates matter added to existing Plan document.
[Brackets] indicate matter deleted from existing Plan document.